

The 6th December, 1994

No. 14/13/87-6Lab./957—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Indographic Art Machinery Co. (P) Ltd. Ballabgarh *Versus* Jai Singh.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD.

Reference No. 294/92.

between

THE MANAGEMENT OF M/S. INDGRAPHIC ART MACNINERY CO. (P.) LTD. 22, MATHURA ROAD, BALLABGARH.

and

THE WORKMAN NAMELY SHRI JAI SINGH, S/O SHRI JITA RAM, 938/A, SANJAY COLONY, NEAR ELSON COTTON MILLS, BALLABGARH.

Present :

Shri M. S. Nagar, AR, for the workman.

Shri R. C. Sharma, AR, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—vide Haryana Government Endorsement No. 22692—97, dated the 19th May, 1992:—

Whether the termination of services of Shri Jai Singh is legal and justified. If not, to what relief, is he entitled to?

2. The case of the claimant is that he had been in the employment of the management as a Junior Supervisor for the last about 12 years and had never given any opportunity of complaint. His last drawn were Rs. 1611.50 p.m. His services were governed by the certified standing orders of the company. The management in gross violation of the provision of the certified standings orders and rules of the natural justice terminated his service,—vide letter dated 2nd January, 1992 without assigning any reason and justification. He had been designated as Junior Supervisor but he was purely a workman as defined under section 2 (S) of the Act. He had to perform manual work most of the time. He had no managerial or supervisory powers. His services could not be terminated without following the provision of section 25-F and 25-N of the Act. He was neither paid retrenchment benefit envisaged under section 25-F of the Act nor any permission to retrench him from service was taken from the Government, required under section 25-N of the Act. The impugned order terminating his service is thus, illegal and void. He is entitled to be reinstated into service with full back wages and continuity in service.

3. The management submitted written statement dated the 11th November, 1992 taking three preliminary objections. Firstly that the claimant was not a 'workman' as defined in section 2 (S) of the Act and as such the reference is liable to be rejected. Secondly the workman has filed a civil suit claiming the same relief and so he is estopped from perusing and contesting the case. Thirdly the company stood completely ruined and no manufacturing activity had been carried on since January, 1992 and as such there existed no post on which the claimant could be re-appointed/reinstated. It was further submitted that the provisions of the certified standings orders are not applicable to the claimant as he was not a workman as defined in section 2 (s) of the Act. His services were thus, legally terminated as per terms of his appointment. He is thus not entitled to any relief.

4. The claimant submitted rejoinder re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed:—

- (1) Whether the applicant does not fall within the definition of section 2 (s) of the Act ?
- (2) As per terms of reference.

6. Both the sides have led evidence. [It was recorded on reference No. 290/90, J. P. Sharma *versus* Indographic Act Machinery Co. (P.) Ltd.].

7. I have heard the authorised representative of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as follows :—

Issue No. 1 :

8. It has been submitted on behalf of the management that as per provision of section 2 (S) of the Act, a person is not included in the term 'workman' defined in it who being employed in supervisory capacity draw wages exceeding 1600/-per p.m. In the instant case admittedly the claimant was appointed as Junior Supervisor and his salary was Rs. 1611.50. It is admitted by the claimant himself that 20—25 fitters used to work with him. So, he was not a workman as defined under section 2 (S) of the Act.

9. In reply it has been contended on behalf of the claimant that the mere designation of supervisor does not exclude a person from the definition of the term workman. It is the primary duty assigned to a person which is the deciding factor. The claimant has vouched that he used to assemble the printing machine and had no powers of supervision. The claimant was thus a workman as defined under section 2 (S) of the Act.

10. To shore the aforesaid position the authorised representative of the claimant relied on the decision in the case between M/s Blue star Ltd. and M. R. Sharma and others 1975 (31) FLR 102 in which it was held that the essence of supervisory nature of work under section 2 (S) in the supervision of the one person over the work of others. Supervision contemplated direction and control. Ordinary supervision is not supervisory with the meaning of section 2 (S) rather supervision of higher type over ordinary supervision would be entitled to be called 'supervisory' with the meaning of Section 2 (S) of the Act.

11. In South Indian Bank Ltd. v/s Authorised Representative Cheku AIR 1964 Supreme Court 1522 there lordship of the Supreme Court referred to paragraph 332 of Shastri award which pointed out that the mere fact that a person was designated as an Accountant would not take him out of the category of the 'workman'. For the same reason, the mere fact that the claimant was designated and appointed as Foreman Junior Supervisor will not bring him out from the definition of the work 'Supervisor' defined in section 2 (S) of the Act. A division bench of Madras High Court held in the case between Engineering Construction Corporation Ltd., Madras and Additional Labour Court, Madras and another 1980 LLJ page 16 that the nature of work and not the nomenclature that is to be considered in deciding whether a person was a workman or not. In the case, it was held that a person appointed as Foreman (carpentry) was a workman as defined under section 2 (S) of the Act even though he was to do the job assigned to him with the help of 10-12 Carpenters in accordance with the design and specifications given. In the instant case the management has not adduced any oral or documentary evidence to prove that the claimant was invested with any supervisory powers. The claimant stated on oath that he used to assemble the printing machines and 20—25 fitters used to be with him. It shows that these powers used to render help to him and not they used to work under him. Consequently, it is held that the claimant was a workman as defined under section 2 (S) of the Act. Issue No. 1 is decided against the management and in favour of the claimant.

Issue No. 2 :

12. It has been submitted on behalf of the management that the workman admitted in rejoinder that he had filed a civil suit which was dismissed as withdrawn. Thus, he was estopped from raising the dispute under the Act having availed of alternative remedy. In reply it has been submitted that the claimant had filed the civil suit for restraining the management from disposing/alienating the property but the same was withdrawn, as the management had alienated their properties during the pendency of the suit. This plea of the workman has to prevail as MW-1 Yasin Khan admitted in the statement made in the Court that the workman had not filed the suit claiming the relief for his reinstatement and as such it has no effect on the present proceedings. Consequently, the objection taken on behalf of the management is not tenable.

13. It has not been contended on behalf of the management that the services of the workman were terminated as per term and conditions of his appointment and as such the impugned section is legal & valid. In reply, it has been submitted that it is not disputed that the workman had rendered service for a period of about 12 years prior to the date of termination of his services. It is also proved that the workman was a workman defined under section 2 (S) of the Act and as such he was governed by the provisions of the Act. In this situation the services of the workman could not be terminated simply as per terms and conditions of his appointment. His service could be terminated by following the provisions of section 25-F of the Act which were not complied with. Thus, the impugned action of the management is illegal and unjustified. There is merit in the submission made on behalf of the workman because the terms and conditions of appointment letter could not have overriding effect to the provisions of the Act. So, the contention raised on behalf of the management can not be accepted.

14. Faced with the aforesaid position Shri R. C. Sharma, authorised representative of the Management urged that it is clear from the impugned order that the workman was asked to collect his dues from the Account Section as per direction of the management. Thus, it stands proved that the management had complied with the provision of Section 25-F of the Act. To support this plea a reference has been made to the case of Hari Singh vs Presiding Officer, Industrial Tribunal-Cum-Labour Court, Rohtak and, another 1993 LLR 385 in which the workman had remained absent and was treated to have abandoned the job. Since the workman was not present, notice was sent to him by post at his local address and he was asked to contact the office of the company to collect his dues. In these circumstances, it was held that it meant nothing except that the workman was entitled to correct his dues as contemplated under section 25-F of the Act. It was further held that such an offer amounts to tendering the amount to the workman along with retrenchment notice especially when the office of the company is situated at the place of the residence of the workman.

15. In the case referred to above, the management had clearly advised the workman to contact the office of the company during the working days from 10. a. m. to 4. p. m. for the collection of his dues. In the instant case, the management advised the workman to collect his dues if any, from the Account section. The words 'if any' used in this letter clearly indicate that the management did not want to pay retrenchment benefit to the workman envisaged under Section 25-F of the Act. That being so, the law laid down in that case can not be applied on the facts of the instant case and the contention raised by the management is rejected.

16. It has been next urged on behalf of the management that the reference made by the Government itself to the Court is illegal as the dispute regarding retrenchment is not covered in the second schedule and it is covered in the Third schedule. The reference should have been made to the Industrial Tribunal. Hence the workman is not entitled to any relief. To support this plea a reference has been made to the case between U. P. Electric Supply Company Ltd. and R. K. Shukla 1960-70 supreme Court case page 889.

17. The contention raised on behalf of the management can not prevail as the proviso to section 10 (1) (d) of the Act itself states that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than 100 workman, the appropriate Government may if it so thinks fit, make the reference to the Labour Court under clause (c).

18. It is concluded that the termination of services of the workman by the management without complying with the provision of section 25-F of the Act is illegal and unjustified. Consequently, the workman is entitled to reinstatement into service with continuity in service and full back wages. It is however, not disputed that the factory was closed in July, 1992. That being so, the workman shall be deemed to have been retrenched on 31st July, 1992 on the closure of the factory. He be thus, given all benefits according to him on this Court till that date. The award is passed accordingly.

U. B. KHANDUJA,

The 27th October, 1994.

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 3154, dated the 31st October, 1994.

A copy, with three spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.